

# Memorandum of Understanding

## The Information Commissioner and the Health and Social Care Information Centre

### **Introduction**

1. This Memorandum of Understanding (MoU) establishes a framework for co-operation and information sharing between the Health and Social Care Information Centre (HSCIC) and the Information Commissioner (the Commissioner) in connection with the investigation of reported breaches of the Data Protection Act 1998 and specifically in relation to the Information Governance Incident Reporting Tool (created by the HSCIC). It sets out the role of each organisation and documents the practical working level arrangements between the Commissioner and the HSCIC.
2. The Commissioner and the HSCIC will monitor the operation of this memorandum and will review it, initially after one year from the date of this document, and subsequently from time to time as necessary.
3. Any changes to this memorandum identified between reviews may be agreed in writing between the parties.
4. Any issues arising in relation to this memorandum will be notified to the point of contact for each organisation (referred to in 23 below).
5. This memorandum is a statement of intent that does not give rise to legally binding obligations on the part of either the Commissioner or the HSCIC.

### **Functions and powers of Commissioner**

6. The Commissioner is a corporation sole appointed by Her Majesty the Queen under the Data Protection Acts 1984 and 1998 to act as the UK's independent regulator promoting public access to official information and protecting personal data.

7. The Commissioner regulates the Data Protection Act 1998 (DPA), the Freedom of Information Act 2000 (FOIA), the Privacy and Electronic Communications (EC Directive) Regulations 2003 (PECR), the Environmental Information Regulations 2004 (EIR) and the INSPIRE Regulations 2009.
8. Section 51 of the DPA places a duty on the Commissioner to promote the following of good practice by data controllers and the observance of the requirements of the DPA by organisations.
9. Where the Commissioner is satisfied that any of the data protection principles have been breached, a number of steps can be taken to seek to change the behaviour of the organisation including:
  - serving information notices requiring organisations to provide the Information Commissioner's Office with specified information within a certain time period;
  - obtaining undertakings committing an organisation to a particular course of action in order to improve its compliance;
  - serving enforcement notices where there has been a breach, requiring organisations to take (or refrain from taking) specified steps in order to ensure they comply with the law;
  - conducting consensual assessments to check organisations are complying; and
  - issuing monetary penalty notices, requiring organisations to pay up to £500,000 for serious breaches.
10. The Commissioner may also prosecute those who commit criminal offences under the DPA.

## **Functions and powers of the HSCIC**

11. The Health and Social Care Information Centre (HSCIC) is a data, information and technology resource for the health and care system and plays a fundamental role in driving better care, better services and better outcomes for patients. The HSCIC collects, analyses and publishes national data and statistical information and also delivers national IT systems and services to support the health and care system.

The HSCIC's key statutory roles and functions are set out in Chapter 2 Part 9 of the Health and Social Care Act 2012 – sections 252 to 275 and include:

- managing national data collections.
  - secure storage and publication of the core national data resources.
  - data collection responsibilities for arms-length bodies and the Department of Health.
  - extending the capability of data linkage services.
  - transitioning from the existing information standards products and services into the new operating model.
  - fulfilling data quality assurance responsibilities.
  - consolidating our position as the national source of indicators.
  - fulfilling information governance responsibilities including publishing the Code of Practice for handling of Confidential Information.
  - implementing plans for the system wide management of administrative burden.
  - Publication of the data collected by HSCIC in a standardised, non-identifiable format for our commitments.
  - Manage and monitor the day-to-day delivery of key national systems and services.
12. The Information Governance Incident Reporting Tool has been developed and implemented by the HSCIC as part of the Information Governance Toolkit. From June 2013 all organisations processing health and adult social care personal data in England are required to use the Information Governance Incident Reporting Tool to report serious data breaches (level 2<sup>1</sup> IG Serious Incidents Requiring Investigation) to NHS England, the Department of Health and the Commissioner. This requirement is set out in the Information Governance Toolkit.

### **Cooperation between the Commissioner and the HSCIC**

13. Subject to any legal restrictions on the disclosure of information (whether imposed by statute or otherwise) and at their discretion, the HSCIC agree that they will:

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<sup>1</sup> Level 2 IG SIRIs are sufficiently high profile cases, incidents which typically breach one of the principles of the Data Protection Act and/or the Common Law Duty of Confidentiality, and are therefore required to be reported to the Department of Health and Information Commissioner's Office.

- a) Provide access to information relating to data protection breaches reported via the Information Governance Incident Reporting Tool (of Level 2 severity) to the Commissioner by providing read-only access to the data;
  - b) Provide an automatic email alert to the Commissioner via the 'casework@ico.gsi.gov.uk' email address where a level 2 data breach is reported to the HSCIC by a Data Controller.
- 14. Subject to any legal restrictions on the disclosure of information (whether imposed by statute or otherwise) and at his discretion, the Commissioner agrees that he will access information provided via the Information Governance Incident Reporting Tool to inform his functions under 8 and 9 above, subject to the restrictions set out at 16.
- 15. Subject to any legal restrictions on the disclosure of information (whether imposed by statute or otherwise) and at their discretion, both parties will:
  - a) Communicate regularly (at least quarterly) to discuss matters of mutual interest (including trends and the suitability of the tool);
  - b) Consult one another at any early stage on any issues which might have significant implications for the other organisation; and
  - c) Share (for comment) at an early stage draft documents (such as consultation papers, guidance and briefings) that may impact on the other's functions.

### **Sharing information**

- 16. Information which the HSCIC receives in the course of performing its functions is specified for the purposes of exercising its responsibilities as referred to in 11 and specifically 12 above.
- 17. Subject to any disclosure restrictions applicable to the HSCIC, they may disclose confidential information to the Commissioner to facilitate the carrying out of a public function of the HSCIC or a statutory function of the Commissioner, as set out in 13 and 15 above.

18. Where the HSCIC wishes to disclose to the Commissioner information necessary for the discharge by the Commissioner of his functions under the DPA (or under FOIA), section 58 DPA provides that no enactment or rule of law prohibiting or restricting the disclosure of information shall preclude the HSCIC from furnishing such information to the Commissioner.
19. In respect of information obtained by or furnished to the Commissioner for the purposes of his functions under the Information Acts, it is an offence under section 59 DPA for any current or former member of the Commissioner's staff or his agent to disclose such information without lawful authority.
20. Section 59(2)(e) DPA provides that a disclosure by the Commissioner of information obtained by or furnished to him is made with lawful authority where, having regard to the rights and freedoms or legitimate interests of any person, the disclosure is necessary in the public interest.
21. In addition, section 59(2)(d) DPA provides that a disclosure of information by the Commissioner is made with lawful authority where the disclosure is made for the purposes of any proceedings, whether criminal or civil.
22. The Commissioner may, at his discretion and in accordance with sub-sections 59(2)(d) and/or (e) DPA, disclose confidential information to HSCIC, where this is necessary for performing the functions set out at 8 and/or 9 above.

## Points of contact

23.

HSCIC	Information Commissioner
HEAD OF EXTERNAL IG DELIVERY (MARIE GREENFIELD)	Intelligence Manager (Adam Stevens)
HEALTH & SOCIAL CARE INFORMATION CENTRE VANTAGE HOUSE LEEDS LS1 4HT	Wycliffe House Water Lane Wilmslow SK9 5AF

**HSCIC**

(Signature)

ANDY WILLIAMS  
CHIEF EXECUTIVE

23/10/15.  
(Date)

**Information Commissioner**

(Signature)

CHRISTOPHER GRAHAM  
Information Commissioner

(Name and title)

12/11/15  
(Date)